

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
CIVIL ACTION NO. \_\_\_\_\_

TIDE TAMER INDUSTRIES, INC., )  
Plaintiff, )  
v. )  
THE CINCINNATI INSURANCE COMPANY, )  
Defendant. )  
\_\_\_\_\_  
 )

) NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. § 1441(b)  
(DIVERSITY)

Defendant, The Cincinnati Insurance Company (“Cincinnati”), hereby gives notice, pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, that it has removed the above-captioned matter to the United States District Court for the Eastern District of North Carolina, Eastern Division. A copy of this Notice is being filed with the Clerk of the Superior Court of Greene County, North Carolina, pursuant to 28 U.S.C. § 1446(b).  
In support of this Notice, Cincinnati states the following:

**PROCEDURAL BACKGROUND AND NATURE OF THE CASE**

1. This is a civil action regarding whether a commercial property insurance contract between Cincinnati and Tide Tamer Industries, Inc. (“Plaintiff”), numbered ENP 022 29 56 (the “Policy”), covers the insurance claim Plaintiff submitted, after Plaintiff’s property allegedly sustained damage from Hurricane Matthew (the “Claim”). See *infra*.
2. On or about October 5, 2018, Plaintiff filed a complaint against Cincinnati in the Superior Court of Greene County, North Carolina (the “Complaint”). The Complaint bears case no. 18 CVS 235 (the “State Court Action”).

3. Plaintiff served the Complaint upon the North Carolina Department of Insurance (“NCDOI”), which the NCDOI received on October 15, 2018. On October 18, 2018, the NCDOI served the Complaint upon Cincinnati, which Cincinnati received on October 23, 2018. *See Exhibit 1, Plaintiff’s Complaint, including a copy of the Policy’s Declarations (identified as Exhibit A); see also Exhibit 2, the NCDOI’s letter denoting its October 15, 2018 receipt of Plaintiff’s complaint, and the NCDOI’s October 18, 2018 Service Letter to Cincinnati.*

4. According to the Complaint, on October 8 and October 9, 2016, Hurricane Matthew blew open Plaintiff’s roof, damaging the roof and allowing water to intrude and damage the interior of Plaintiff’s building. *See Ex. 1, Pl.’s Compl., ¶¶11-12.*

5. Plaintiff alleges that after submitting the Claim to Cincinnati, Cincinnati improperly declined coverage under the Policy. *Id. at ¶¶13-14.*

6. Plaintiff commenced the above-mentioned State Court Action, alleging in its Complaint one count against Cincinnati for Breach of Contract. Plaintiff’s Complaint seeks actual damages in the amount of “\$134,481.00, or such greater amount that may be shown in a trial,” as well as pre- and post-judgement interest. *Id. at pp. 4-5.*

7. In accordance with the foregoing, 28 U.S.C. § 1332(a)(1), 28 U.S.C. § 1446 (b)(3), and 28 U.S.C. § 1446 (c)(1), Cincinnati removes this matter to this Court.

#### **JURISDICTIONAL BASIS UNDER 28 U.S.C. § 1332**

8. Under U.S.C. § 1332(a)(1), this Court has “original jurisdiction where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States ....” *Id.* Here, both criteria are met.

**A. Complete Diversity of Citizenship Exists.**

9. According to the Complaint, Plaintiff is a corporation organized and existing under the laws of North Carolina with its principal place of business in Greene County, North Carolina. See *Ex. 1, Compl.*, ¶1, p. 1.

10. Also according to the Complaint, Cincinnati is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Cincinnati, Ohio. See *Ex. 1, Compl.*, ¶2, p. 1.

11. Therefore, because Plaintiff and Cincinnati are the only Parties to this Action and are citizens of different states, complete diversity between the Parties exists.

**B. The Amount in Controversy Exceeds \$75,000.00.**

12. Plaintiff's Complaint acknowledges that the particular amount in controversy is at least \$134,481.00. See *Ex. 1, Comp.*, ¶19, p. 4.

13. This acknowledgement satisfies the amount in controversy requirement, as it clearly exceeds the \$75,000.00 threshold. See U.S.C. § 1332(a)(1).

**LEGAL ARGUMENT**

14. Because the amount in controversy in this matter exceeds \$75,000.00, exclusive of interest and costs, and this matter is between citizens of different states, this Honorable Court has jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441.

15. Pursuant to 28 U.S.C. §1441(a), this Court is the proper venue for removal because it is the district and division embracing the place wherein the originally filed state action is pending. See *Ex. 1, Comp.*, ¶¶7-9, p. 2 (*alleging that the Building and damage at issue occurred in Greene County and that the State Court Action was filed in Greene County*). Cincinnati does not waive its right to contest venue, including

pursuant to 28 U.S.C. §1404.

16. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon counsel for the Plaintiff and shall be contemporaneously filed with the Clerk's Office for the Superior Court of Greene County, North Carolina.

17. A copy of the Notice of Removal to Opposing Counsel and the Notice of Filing the Notice of Removal, both of which shall be filed in the State Court action, is attached hereto as Exhibits 3 and 4, respectively.

18. This Notice of Removal is not a waiver of Cincinnati's defenses, including but not limited to the right to contest venue, nor should it be understood or construed as a waiver of any defense Cincinnati may have against any of the allegations in the Complaint, or as a general appearance or waiver of any defense based upon lack of jurisdiction or for failure to state a claim.

WHEREFORE, Defendant, The Cincinnati Insurance Company, requests that the above-captioned action be removed from the Superior Court of Greene County, North Carolina, to the United States District Court for the Eastern District of North Carolina.

BUTLER WEIHMULLER KATZ CRAIG LLP

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*Attorneys for Cincinnati Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of November, 2018, I served a true and correct copy of the above by placing the same, postage prepaid, in the United States Mail addressed to the following persons, as well as filing the same with the above-captioned court via CM-ECF System.

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/s/ T. Nicholas Goanos  
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